

SUPREME COURT
OF THE STATE OF WASHINGTON

PALMER D. STRAND, et al.) No. 94313-3
)
v.) **MEMORANDUM ON ISSUE**
) **OF UNTIMELINESS OF**
SPOKANE COUNTY, et al.) **APPEAL**

* * * * *

INTRODUCTION

On July 1, 2016, Judge Michael Price issued the following Order
Granting Defendant's Motion for Partial Summary Judgment:

Summary Judgment is granted to the County on the ground all responsive documents were provided to Mrs. Strand in response to her 2/27/15 public records request except for: (1) 19 pages of BTA records; and (2) responsive documents pertaining to parcel #17274.9110 (Margitan). The remaining issue of costs & penalties, if any for production of the later discovered documents in (1) and (2) above shall be heard at a later date.

On July 6, 2016, Strands filed a Motion for Reconsideration. On July 26, 2016, the trial court denied Plaintiffs' Motion for Reconsideration.

The July 26, 2016 order by the trial court denying Plaintiffs' Motion for Reconsideration started the 30 day timeframe to appeal. RAP 5.2.

On August 26, 2016, the trial court ordered costs and penalties in the amount of \$1473.00.

On September 8, 2016, Strands filed a Notice of Appeal.

By correspondence dated October 4, 2016, the Court of Appeal *sua sponte* notified the parties that:

Therefore, we have set this matter on the Commissioners' document of November 2, 1016, on a Court's motion to dismiss for failure to timely file a notice of appeal. See RAP 5.2(a). This motion will be considered without oral argument.

A Commissioner's Ruling was issued November 8, 2016 granting the Court's motion to dismiss the Strands' appeal/review as untimely.

On November 18, 2016, Strands filed a Motion to Enter Final Order in Spokane County Superior Court. On November 22, 2016, Judge Price sent a correspondence stating in part:

[T]he order signed by this Court on July 1, 2016 resolved this case in total. That was followed by an Order on Reconsideration, which this Court denied on July 26, 2016. Although, a subsequent order was entered on August 26th regarding costs and penalties, essentially, the merits of this case in total were addressed in finality following entry of the order on summary judgment.

On December 13, 2016, the following Amended Commissioner's Ruling was issued:

IT IS ORDERED, the Court's motion to dismiss the Strands' appeal of the July 1 and July 26, 2016 Orders as untimely filed is granted. Their appeal of the August 26, 2016 Order that awarded them costs and penalties is bifurcated from their appeal of the now dismissed Orders....

An Order Denying Motion to Modify Amended Commissioner's Ruling was issued on February 28, 2017 by Chief Judge George Fearing.

Strands petitioned this Court for Discretionary Review and in response this Court issued a ruling, directing Spokane County to address whether:

A judgment that reserves for future determination an award of a daily amount for each day a requester was denied the right to inspect or copy a public record is a "final judgment [that] reserves for future determination an award of attorney fees or costs" within the meaning of RAP 2.2(a)(1).

LAW AND ARGUMENT

A final judgment is such a judgment as at once puts an end to the action by declaring that the plaintiff has or has not entitled himself to recover the remedy for which he sues.

Reif v. La Follette, 19 Wn.2d 366, 370, 142 P.2d 1015 (1943)

2A Karl B. Tegland, *Wash. Prac., Rules Practice* RAP 2.2 at 101 (8th ed.) provides:

Under RAP 2.2(a)(1), a final judgment is appealable "regardless of whether the judgment reserves for future determination an award of attorney fees or costs." The drafting history of the rule makes clear the drafters' intent that the time


limit for an appeal runs from entry of the final judgment, and is *not tolled* until issues of costs and attorney fees are resolved.

The essence of RAP 2.2(a)(1) is that a judgment may be final even though further steps in the case are contemplated i.e. issues including costs and attorney's fees.

The judgment is no less final in the present case because the further determination of penalties was contemplated.

DATED this 3rd day of July, 2017

LAWRENCE HASKELL
Prosecuting Attorney



ROBERT B. BINGER, WSB# 10774
Deputy Prosecuting Attorney


PROOF OF SERVICE

I hereby declare under the penalty of perjury and the laws of the State of Washington that the following statements are true.

On the 3rd day of July, 2017, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Palmer D. Strand	<input type="checkbox"/>	Personal Service
Patricia N. Strand	<input checked="" type="checkbox"/>	U.S. Mail
P.O. Box 312	<input type="checkbox"/>	Hand-Delivered
Nine Miles Falls, Washington 99026	<input type="checkbox"/>	Overnight Mail
(Plaintiffs Pro Se)	<input type="checkbox"/>	Facsimile

Dated this 3rd day of July, 2017, in Spokane, Washington.


Donna Monroe

SPOKANE COUNTY PROSECUTOR

July 03, 2017 - 11:44 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94313-3
Appellate Court Case Title: Palmer D. Strand and Patricia N. Strand v. Spokane County et al.
Superior Court Case Number: 16-2-01079-7

The following documents have been uploaded:

- 943133_Briefs_20170703113721SC571823_2839.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Untimeliness.pdf

A copy of the uploaded files will be sent to:

- dmonroe@spokanecounty.org

Comments:

Sender Name: Donna Monroe - Email: dmonroe@spokanecounty.org

Filing on Behalf of: Robert Blaine Binger - Email: rbinger@spokanecounty.org (Alternate Email: scpaappeals@spokanecounty.org)

Address:
1100 W Mallon Ave
Spokane, WA, 99260-0270
Phone: (509) 477-3662

Note: The Filing Id is 20170703113721SC571823